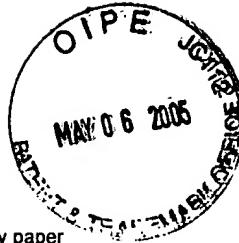


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*Note
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 Date: 5-4-05
Richard T. Lyon



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Reply Brief
6-15-05
M.F.S.

PATENT
Docket No.: GTW-048-99

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of
Tash

Group Art Unit: 3751

Entitled: IMPROVED TOILET AND
SINK DRAIN PLUNGER

Examiner: R. Fetsuga

Serial No.: 08/637,894

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Filing Date: April 25, 1996

REPLY BRIEF TO SUPPLEMENTAL EXAMINER'S ANSWER

In response to the Supplemental Examiner's Answer dated March 25, 2005 the appellant submits the following additional arguments.

First, in order to further focus the appeal and simplify the issues in question, the appellant has filed in conjunction with this reply brief an amendment under 37 CFR 41.33(b)(1) canceling Claims 3, 4 and 10-17. Accordingly, the following comments will be directed toward the patentability of Claims 1, 2 and 6-9 only.

The Examiner continues to argue that the four ribs (ref. no. 7) described in the Scarella reference constitute four separate seals. However, as argued by the appellant in the Appeal Brief filed on October 3, 2003, the

ribs are part of a single seal. This is clearly stated in the Scarella reference. As quoted in the Appeal Brief, Scarella states on Page 5 of the translation, at line 19 and continuing to Page 6, line 3:

"Structure 6. Conical body, slightly deformable through internal pressure. Function. The conical body, especially designed to penetrate inside toilet bowl traps, is graduated outside with ribs, marking, and indicating the penetration Φ (a symbol apparently meaning depth or diameter), suitable for each bowl model. These ribs are used for anchoring, they prevent the cone from slipping during the operation of heavy compression. Under pressure, cone 6 inflates slightly, and its outer part adheres against the inside of the trap, it takes on its shape, and creates a seal.".

Thus, the four ribs 7 function as markings to tell the user how deep to insert the conical body (6) into the toilet bowl, and as anchors to prevent the conical body from slipping when the plunger is compressed. However, they are just part of one seal, i.e., the conical body which upon being inflated under pressure acts as a seal.

Thus, Scarella clearly does not teach that the ribs 7 provide individual sealing capability as implied by the Examiner in contending they equate to one or more of the claimed sealing rings, or that they are seals at all.

It was further pointed out in the Appeal Brief that the ribs 7 described in Scarella do not depend from each other or form an integral unit as claimed by the appellant. The appellant characterized this structure as being sequentially-connected seals. The Examiner appears to admit in the Supplemental Answer that Scarella does not teach sequentially-connected seals—thus the need for the provisional rejection of the claims over Scarella in view of Locke. However, at the same time the Examiner took exception to this characterization in the Supplemental Answer stating that when construed broadly the claim language did not limit the invention to sequentially-connected seals. It is the appellant's position that the claim language of Claim 1 does equate to sequentially-

connected seals. This claim recites that the second ring seal depends from the first ring seal, that the third ring seal is secured to the underside of said second seal, and that the seals are integral with each other.

As for the assumed provisional rejection of remaining Claims 1, 2, 6, and 9 under 35 USC 103(a) over Scarella in view of Locke, it is noted that the introduction of a sequentially-connected configuration to the ribs 7 of the Scarella invention would destroy their function. It is well settled in the law that a 35 USC 103 rejection based on a modification of prior art that destroys the function of the invention disclosed in the prior art, is improper and does not establish a *prima facie* case of obviousness. *In Re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). There is simply no technological motivation for a worker to make such a detrimental modification. To the contrary, a significant disincentive exists. In this case, the substitution of the sequentially-connected corrugations taught in Locke for the graduated ribs 7 taught in Scarella would destroy an expressed functionality of Scarella invention. Clearly, sequentially connecting the ribs of Scarella would destroy their ability to indicate the depth of penetration as they would no longer be graduated along the surface of the cone seal 6. Accordingly, a *prima facie* showing of obviousness cannot be made over Scarella in view of Locke.

For the foregoing reasons, it is submitted that the Examiner's rejection of remaining Claims 1, 2 and 6-9 was erroneous, and reversal of the Examiner's decision is respectfully requested.

Respectfully submitted,



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